

# HOUSE . . . . . No. 4770

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## The Commonwealth of Massachusetts

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Recommended by the committee on Health Care Financing as a substitute for a bill with the same title (House, No. 4770). June 21, 2010.

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FOR THE COMMITTEE

NAME:	DISTRICT/ADDRESS:
Harriett L. Stanley	2nd Essex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

## An Act RELATIVE TO THE ENHANCEMENT OF THE PRESCRIPTION MONITORING PROGRAM. .

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 1 of chapter 94C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the definition “Dispense” the following definition:-

“Dispenser”, a person who delivers a schedule II to V, inclusive, controlled substance to the ultimate user, but shall not include: a wholesale distributor of a schedule II to V, inclusive, controlled substance.

SECTION 2. Said chapter 94C, as so appearing, is hereby further amended by inserting after section 24 the following section:-

Section 24A. (a) The department shall establish and maintain an electronic system to monitor the prescribing and dispensing of all Schedule II to V, inclusive, controlled substances and certain additional drugs by all professionals licensed to prescribe or dispense such substances.

“Additional drugs” shall mean substances determined by the department that demonstrate a bona fide potential of abuse. The department shall enter into reciprocal agreements with any other state to share prescription drug monitoring information if the other state's prescription drug monitoring program is compatible with the program as set forth in this section.

(b) The requirements of this section shall not apply to the dispensing of controlled substances to inpatients in a hospital.

(c) Each dispenser shall submit to the department, by electronic means, information regarding each prescription dispensed for a drug included pursuant to subsection (a) as required by rules and regulations promulgated by the department. Each dispenser shall submit the information in

21 accordance with transmission methods and frequency promulgated by the department, but at  
22 least once every 7 days. The department may issue a waiver to a dispenser that is unable to  
23 submit prescription information by electronic means. Such waiver shall permit the dispenser to  
24 submit prescription information by other means promulgated by the department, provided all  
25 information required in this section is submitted in this alternative format.

26 (d) Prescription information submitted to the department pursuant to this section shall be  
27 confidential and exempt from disclosure under chapter 66 and clause Twenty-sixth of section 7  
28 of chapter 4 and not subject to public or open records laws. The department shall maintain  
29 procedures to ensure that the privacy and confidentiality of patients and patient information  
30 collected, recorded, transmitted and maintained is not disclosed to persons except as provided for  
31 in this chapter.

32 (e) The department shall review the prescription and dispensing monitoring information. If there  
33 is reasonable cause to believe a violation of law or breach of professional standards may have  
34 occurred, the department shall notify the appropriate law enforcement or professional licensing,  
35 certification or regulatory agency or entity, and provide prescription information required for an  
36 investigation.

37 (f) The department shall, upon request, provide data from the prescription monitoring program to  
38 the following:-

39 (1) persons authorized to prescribe or dispense controlled substances, for the purpose of  
40 providing medical or pharmaceutical care for their patients;

41 (2) individuals who request their own prescription monitoring information in accordance with  
42 procedures established under chapter 66A;

43 (3) persons authorized to act on behalf of state boards and regulatory agencies that supervise or  
44 regulate a profession that is authorized to prescribe controlled substances; provided, that the data  
45 request is in connection with a bona fide specific drug related investigation;

46 (4) local, state and federal law enforcement or prosecutorial officials working with the executive  
47 office of public safety engaged in the administration, investigation or enforcement of the laws  
48 governing prescription drugs; provided, that the data request is in connection with a bona fide  
49 specific drug related investigation;

50 (5) personnel of the executive office of health and human services regarding Medicaid program  
51 recipients, provided, that the data request is in connection with a bona fide specific drug related  
52 investigation; or

(6) personnel of the United States attorney, office of the attorney general or the district attorneys; provided, that the data request is in connection with a bona fide specific drug related investigation.

(g) The department may provide de-identified, aggregate information to public or private entities for statistical, research or educational purposes.

(h) The department may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. Any contractor shall be bound to comply with the provisions regarding confidentiality of prescription information in this section. and shall be subject to the penalties specified in this section.

(i) The department shall promulgate rules and regulations setting forth the procedures and methods for implementing this section.

(j) The department shall submit an annual report on the effectiveness of the prescription monitoring program with the clerks of the house and senate, the chairs of the joint committee on public health, the chairs of the joint committee on health care financing, and the chairs of the joint committee on public safety and homeland security.

SECTION 3. Said chapter 94C, as so appearing, is hereby further amended by adding the following section:-

Section 49. The department of public health shall enforce section 24A. To carry out this purpose, the department shall:-

(a) inspect, copy and audit records, inventories of controlled substances and reports required under said section 24A and rules and regulations adopted under said section;

(b) enter the premises of regulated distributors and dispensers during normal business hours to conduct administrative inspections;

(c) assist law enforcement agencies in enforcing this chapter;

(d) conduct investigations to enforce this chapter;

(e) present evidence obtained from investigations conducted in conjunction with the office of the attorney general and the appropriate district attorneys for civil or criminal prosecution or for administrative action against regulated distributors, dispensers and licensees; and

SECTION 4. Notwithstanding any general or specific law to the contrary, the department of public health shall promulgate rules and regulations relative to the prescription monitoring program established by section 24A of chapter 94C ( not later than October 1, 2012.

84 SECTION 5. The department of public health shall submit a report on the status of this act with  
85 the clerks of the house and senate, the chairs of the joint committee on public health, the chairs  
86 of the joint committee on health care financing and the chairs of the joint committee on public  
87 safety and homeland security within 90 days of the passage of this act.

88 SECTION 6. Section 2 shall take effect on January 1, 2011.